



GSA Federal Acquisition Service

September 15, 2012

FAS INSTRUCTIONAL LETTER 2012-11**MEMORANDUM FOR ALL FAS and VA ACQUISITION ACTIVITIES**

FROM:

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ASSISTANT COMMISSIONER
OFFICE OF ACQUISITION MANAGEMENT (QV)

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SUBJECT:

Implementation of OMB Policy Memorandum M-12-16
Providing Prompt Payment to Small Business
Subcontractors under the Federal Supply Schedule
Program and Other FAS Acquisition Vehicles and
Contracts

1. **Purpose:** The purpose of this Instructional Letter (IL) is to implement Office of Management and Budget (OMB) Policy Memorandum M-12-16 *Providing Prompt Payment to Small Business Subcontractors* and the resultant class deviation to the Federal Acquisition Regulation (FAR). This IL provides guidance on how to incorporate clause 52.232-99 *Providing Accelerated Payment to Small Business Subcontractors* (DEVIATION) (AUG 2012) into FAS solicitations and contracts as well as Veterans Administration (VA) Federal Supply Schedule (FSS) solicitations and contracts.
2. **Background:** On July 11, 2012, OMB issued [Policy Memorandum M-12-16, *Providing Prompt Payment to Small Business Subcontractors*](#). This memorandum establishes the Administration's initiative to accelerate Federal payments to prime contractors, so that prime contractors can, in turn, expedite payments to their small business subcontractors. Faster payments to small business subcontractors can improve their cash flow and provide the capital resources needed to expand their business opportunities. This can lead to a stronger supplier base that supports Federal prime contractors in meeting the needs of their Federal customers in a timely and cost-effective manner.

The memorandum directs that agencies should, to the full extent permitted by law, temporarily accelerate payments to all prime contractors, in order to allow them to provide prompt payments to small business subcontractors. This is a temporary one-year policy, and while in effect, agencies are to encourage prime contractors to pay small business subcontractors on an accelerated timetable to the maximum extent practicable.

With this goal in mind, effective immediately, all solicitations issued and new contracts awarded must include clause 52.232-99 *Providing Accelerated Payment to Small Business Subcontractors* (DEVIATION) (AUG 2012) [[see ATTACHMENT 1](#)]. Existing contracts are

encouraged to be bilaterally modified to include clause 52.232-99 in accordance with FAR 1.108(d)(3). Pursuant to this clause, upon receipt of accelerated payments from the Government, contractors are required to make accelerated payments to small business subcontractors to the maximum extent practicable after receipt of a proper invoice and all proper documentation from the small business subcontractor. The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.

3. Effective Date: Date of signature.
4. Termination Date: This IL expires one year from the effective date unless cancelled, extended, or incorporated into a handbook.
5. Applicability: This IL applies to all GSA/FAS acquisition activities. This IL also applies to VA acquisition activities awarding and administering FSS contracts.
6. Reference Regulations: Deviation dated August 30, 2012 through Acquisition Letter MV-12-08.
7. Instructions/Procedures:

I. Federal Supply Schedules

- A. Solicitation Refresh: All Schedule solicitations must be refreshed to insert clause 52.232-99 *Providing Accelerated Payment to Small Business Subcontractors* (DEVIATION) (AUG 2012). This refresh must be completed no later than 45 days after the effective date of this IL.
- B. In-House Offers: For eOffers in-house at time of solicitation refresh, the contracting officer shall request that the offeror access the eOffer system and "accept" the latest refresh. The offeror will also have the option of withdrawing its offer.
- C. Contract Modification: All Schedule contracts shall be modified bilaterally to incorporate clause 52.232-99 *Providing Accelerated Payment to Small Business Subcontractors* (DEVIATION) (AUG 2012). This will be accomplished via the mass modification issued by the Solicitation Writing System (SWS) after a solicitation refresh. There is no need for a separate modification.
 - i. Contractors may take "Exception" to clause 52.232-99 *Providing Accelerated Payment to Small Business Subcontractors* (DEVIATION) (AUG 2012).

II. FAS Governmentwide Acquisition Contracts (GWACs), Multi-Agency Contracts (MACs), and other Indefinite-Delivery Indefinite-Quantity (IDIQ) Contracts

- A. Insert clause 52.232-99 *Providing Accelerated Payment to Small Business Subcontractors* (DEVIATION) (AUG 2012) in all solicitations.
- B. The contracting officer shall attempt to modify all existing contracts through

a bilateral modification within 45 days of the effective date of this IL to incorporate 52.232-99 *Providing Accelerated Payment to Small Business Subcontractors* (DEVIATION) (AUG 2012). Contractors may elect to reject the modification incorporating the clause.

III. Placement of Orders Against FAS IDIQs (e.g. Federal Supply Schedules, GWACs) and Establishment of Schedule Blanket Purchase Agreements

- A. The contracting officer shall check to ensure the supplier's underlying contract has been modified to incorporate 52.232-99 *Providing Accelerated Payment to Small Business Subcontractors* (DEVIATION) (AUG 2012). If it has not –
 - i. If an internal FAS acquisition, contracting officers shall include the clause in the Request for Quote.
 - ii. If a facilitated direct acquisition for another agency, contracting officers should consult funding agency-level policy guidance regarding the clause. The incorporation of this clause is encouraged unless otherwise indicated.

IV Open Market Acquisitions (awarded under FAR Parts 12, 13, 14, and 15)

- A. Insert clause 52.232-99 *Providing Accelerated Payment to Small Business Subcontractors* (DEVIATION) (AUG 2012) in all solicitations.
- B. The contracting officer shall attempt to modify all existing contracts through a bilateral modification within 45 days of the effective date of this IL to incorporate 52.232-99 *Providing Accelerated Payment to Small Business Subcontractors* (DEVIATION) (AUG 2012). Contractors may elect to reject the modification incorporating the clause.

V. Revisions to Customer-Facing Acquisition Policy Guidance

- A. FAS acquisition activities facilitating direct acquisition through the administration of applicable FAS contract vehicles (e.g., Schedules, GWACs, and other MACs) are responsible for updating acquisition guidance (ordering guides, websites, etc.) to reflect these changes. The MAS Program Office will update the acquisition policy guidance on www.gsa.gov/schedules to reflect this new requirement.

8. Questions and Answers:

Q1. Should COs cancel or terminate a contract if the contractor refuses to incorporate clause 52.232-99?

A1. FAS COs should not cancel or terminate contracts for contractor refusal of incorporating clause 52.232-99.

ATTACHMENT 1

52.232-99 PROVIDING ACCELERATED PAYMENT TO SMALL BUSINESS SUBCONTRACTORS (DEVIATION) (AUG 2012)

This clause implements the temporary policy provided by OMB Policy Memorandum M- 12-16, Providing Prompt Payment to Small Business Subcontractors, dated July 11, 2012.

- (a) Upon receipt of accelerated payments from the Government, the contractor is required to make accelerated payments to small business subcontractors to the maximum extent practicable after receipt of a proper invoice and all proper documentation from the small business subcontractor.
- (b) Include the substance of this clause, including this paragraph (b), in all subcontracts with small business concerns.
- (c) The acceleration of payments under this clause does not provide any new rights under the Prompt Payment Act.